

AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 1862
OFFERED BY MS. SCHAKOWSKY

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Drug Free Sports
3 Act”.

4 SEC. 2. DEFINITIONS.

5 As used in this Act—

(1) the term “Secretary” refers to the Secretary of Commerce; and

(2) the term “professional sports associations” means Major League Baseball, the National Basketball Association, the National Football League, the National Hockey League, Major League Soccer, the Arena Football League, and any other league or association that organizes professional athletic competitions as the Secretary may determine.

15 SEC. 3. RULES REQUIRING MANDATORY TESTING FOR ATH-
16 LETES.

17 Not later than 270 days after the date of enactment
18 of this Act, the Secretary shall issue regulations requiring



1 professional sports associations operating in interstate
2 commerce to adopt and enforce policies and procedures for
3 testing athletes who participate in their respective associa-
4 tions for the use of performance-enhancing substances.
5 Such policies and procedures shall, at minimum, include
6 the following:

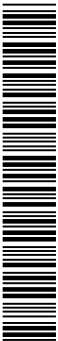
7 (1) TIMING AND FREQUENCY OF RANDOM TEST-
8 ING.—Each athlete shall be tested a minimum of
9 twice each year that such athlete is participating in
10 the activities organized by the professional sports as-
11 sociation. Tests shall be conducted at random inter-
12 vals throughout the entire year, during both the sea-
13 son of play and the off-season, and the athlete shall
14 not be notified in advance of the test.

15 (2) APPLICABLE SUBSTANCES.—The Secretary,
16 in consultation with the Food and Drug Administra-
17 tion, shall, by rule, prescribe the substances for
18 which each athlete shall be tested, which shall
19 include—

20 (A) substances that are—

21 (i) determined by the World Anti-
22 Doping Agency to be prohibited sub-
23 stances; and

24 (ii) determined by the Secretary, to be
25 performance-enhancing substances for any



1 particular sport and for which testing is
2 reasonable and practicable; and

3 (B) such additional substances that the
4 Secretary may determine to be performance-en-
5 hancing substances for any particular sport and
6 for which testing is reasonable and practicable.

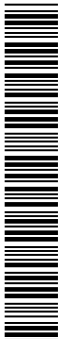
7 (3) THERAPEUTIC AND MEDICAL USE EXEMP-
8 TIONS.—The Secretary shall establish criteria by
9 which professional sports associations may provide
10 an athlete with an exemption for a particular sub-
11 stance, if such substance has a legitimate medical or
12 therapeutic use, and if such use is for a documented
13 medical condition of such athlete.

14 (4) METHOD OF TESTING AND ANALYSIS.—
15 Tests shall be administered by an independent party
16 not affiliated with the professional sports associa-
17 tion.

18 (5) PENALTIES.—Subject to the determination
19 made pursuant to an appeal as described in para-
20 graph (6), a positive test shall result in the following
21 penalties:

22 (A) SUSPENSION.—

23 (i) An athlete who tests positive shall
24 be suspended from participation in the pro-



1 professional sports association for a minimum
2 of 2 years.

3 (ii) An athlete who tests positive, hav-
4 ing once previously violated the policies
5 concerning performance enhancing sub-
6 stances, shall be permanently suspended
7 from participation in the professional
8 sports association.

9 All suspensions shall include a loss of pay for
10 the period of the suspension.

11 (B) DISCLOSURE.—The name of any ath-
12 lete having a positive test result resulting in
13 suspension shall be disclosed to the public.

14 (C) EXCEPTIONAL CIRCUMSTANCES.—The
15 Secretary shall establish criteria by which pro-
16 fessional sports associations may reduce the pe-
17 riod of suspension for an athlete who has tested
18 positive for a prohibited substance but who es-
19 tablishes that he or she bears no fault or neg-
20 ligence or no significant fault or negligence for
21 the violation. In establishing such criteria, the
22 Secretary shall consider the policies and prac-
23 tices of the World Anti-Doping Agency regard-
24 ing reduced penalties for exceptional cir-
25 cumstances.



1 (6) APPEALS PROCESS.—

2 (A) HEARING AND FINAL ADJUDICA-
3 TION.—An athlete who tests positive and is
4 subject to penalty under paragraph (5) shall be
5 afforded an opportunity for a prompt hearing
6 and a right to appeal. Such athlete shall file an
7 appeal with the professional sports association
8 within 5 days after learning of the positive test.
9 The association shall hold a hearing before an
10 arbiter established under subparagraph (B) and
11 such arbiter shall reach a final adjudication not
12 later than 30 days after receiving notice of the
13 appeal. The penalties specified in paragraph (5)
14 shall be stayed pending an appeal and final ad-
15 judication.

16 (B) ARBITER.—The arbiter of the appeals
17 process described in subparagraph (A) shall be
18 agreed upon mutually by the professional sports
19 association and the athletes who participate in
20 the activities of such professional sports asso-
21 ciation (or the representatives of such athletes),
22 and shall be approved by the Secretary, and
23 such approval shall not be unreasonably with-
24 held.



1 **SEC. 4. NONCOMPLIANCE.**

2 Beginning 1 year after the date on which the final
3 rules required by section 3 are issued, the Secretary may
4 fine any professional sports association that fails to adopt
5 and enforce testing policies and procedures consistent with
6 such regulations. An initial fine for failing to adopt or en-
7 force such policies and procedures under this Act shall be
8 \$5,000,000 and may be increased by the Secretary by
9 \$1,000,000 for each day of noncompliance. The Secretary
10 may reduce the fines specified in this section upon finding
11 such fines to be unduly burdensome on a professional
12 sports association.

13 **SEC. 5. REPORTS.**

14 (a) REPORT ON EFFECTIVENESS OF REGULA-
15 TIONS.—Not later than 2 years after the date of enact-
16 ment of this Act and every 2 years thereafter, the Sec-
17 retary shall transmit to the Committee on Energy and
18 Commerce of the House of Representatives and the Com-
19 mittee on Commerce, Science, and Transportation of the
20 Senate, a report describing the effectiveness of the regula-
21 tions prescribed pursuant to this Act, the degree to which
22 professional sports associations have complied with such
23 regulations, and any significant examples of noncompli-
24 ance.

25 (b) STUDY ON COLLEGE AND SECONDARY SCHOOL
26 TESTING POLICIES AND PROCEDURES.—



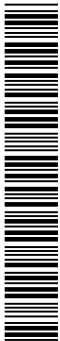
1 (1) STUDY.—The Comptroller General shall
2 conduct a study on the use of performance-enhanc-
3 ing substances by college and secondary school ath-
4 letes. The study shall examine the prohibited sub-
5 stance policies and testing procedures of—

6 (A) intercollegiate athletic associations;

7 (B) college and university athletic depart-
8 ments; and

9 (C) secondary schools and State and re-
10 gional interscholastic athletic associations.

11 (2) REPORT.—Not later than 1 year after the
12 date of enactment of this Act, the Comptroller Gen-
13 eral shall transmit a report to the Committee on En-
14 ergy and Commerce of the House of Representatives
15 and the Committee on Commerce, Science, and
16 Transportation of the Senate. The report shall as-
17 sess the adequacy of such testing policies and proce-
18 dures in detecting and preventing the use of per-
19 formance-enhancing substances, and shall include
20 any recommendations to Congress regarding expand-
21 ing the application of the regulations issued pursu-
22 ant to this Act to such intercollegiate and inter-
23 scholastic athletic associations.



1 **SEC. 6. RULES OF CONSTRUCTION.**

2 (a) PRE-EXISTING POLICIES.—Nothing in this Act
3 shall be construed to prohibit a professional sports asso-
4 ciation from continuing to enforce policies and procedures
5 governing the use of performance-enhancing substances
6 that were in effect on the date of enactment of this Act.

7 (b) MORE STRINGENT POLICIES.—Nothing in this
8 Act shall be construed to prohibit a professional sports
9 association and its athletes (or the representatives of its
10 athletes) from negotiating and agreeing upon policies and
11 procedures governing the use and testing of performance-
12 enhancing substances that are more stringent than those
13 required by this Act.

